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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,576	12/08/2003	Frank S. Filz	BEA9-2003-0016-US1	3051
49056 7590 03/08/2007 LIEBERMAN & BRANDSDORFER, LLC 802 STILL CREEK LANE GAITHERSBURG, MD 20878			EXAMINER JOHNSON, JOHNESE T	
			ART UNIT 2166	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS			MAIL DATE 03/08/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/730,576

Applicant(s)

FILZ, FRANK S.

Examiner

Johnese Johnson

Art Unit

2166

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08 December 2003</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 14 and 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 14 and 15 recite "signal-bearing medium" and "modulated carrier signal". When nonfunctional descriptive material is recorded on some computer- readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored in a computer-readable medium, in a computer, on an electromagnetic carrier signal does not make it statutory (see MPEP 2106.01).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Short et al. (US Pat. No. 6,178,529).

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As to claim 1, Short et al. disclose:

(a) creating a version control record comprising all versions of each type of data structure in a shared resource (see col. 9, lines 20-22); and (b) validating software compatibility of a new cluster member with each data structure using the version control record prior to a new cluster member joining said cluster (see col. 5, lines 12-21).

As to claim 2, Short et al. disclose:

scanning a data structure type record within said shared resource prior to accessing said version control record

As to claim 3, Short et al. disclose:

wherein the step of validating software compatibility of a new cluster member includes scanning said version control record for a data structure version conflict (see col. 9, lines 15-22).

As to claim 4, Short et al. disclose:

maintaining a table within said version control record of an operating software version of each node in said cluster (see col. 9, lines 33-35).

As to claim 5, Short et al. disclose:

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validating compatibility of each node in said cluster with said operating software version table (see col. 9, lines 15-22, 33-35 and col. 6, lines 59-62) prior to upgrading each data structure in said shared resource (see col. 5, lines 36-38 – global update).

As to claim 6, Short et al. disclose:

wherein the step of validating compatibility of each of said nodes in said cluster is inclusive of inactive cluster nodes (see col. 5, lines 12-21).

As to claim 7, Short et al. disclose:

wherein said shared resource is selected from a group consisting of: a storage area network, and shared memory (see col. 2, line 56).

As to claim 8, Short et al. disclose:

at least two nodes adapted to operate in a computer cluster (see col. 4, line 40); a version control record in a shared resource of said cluster (see col. 9, lines 33-35); said version control record inclusive of all versions of each type of data structure in said shared resource (see col. 9, lines 33-35); and a membership manager adapted to validate compatibility of a new cluster member with each of said data structure with use of said version control record prior to acceptance of said new cluster member (see col. 9, lines 12-22 and 33-35).

As to claim 9, Short et al. disclose:

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an operating software version table within said version control record (see col. 9, lines 33-35).

As to claim 10, Short et al. disclose:

a validation manager adapted to validate compatibility of an existing cluster member with said operating software version table (see col. 9, lines 15-22, 33-35 and col. 6, lines 59-62) prior to an upgrade of each data structure in said shared storage see col. 5, lines 36-38 – global update).

As to claim 11, Short et al. disclose:

wherein said validation manager is inclusive of inactive cluster nodes (see col. 5, lines 12-21).

As to claim 12, Short et al. disclose:

a version manager adapted to scan a data structure type record within said shared resource prior to access of said version control record by a cluster member (see col. 5, lines 12-21).

As to claim 13, Short et al. disclose:

wherein said shared resource is selected from a group consisting of: a storage area network, and shared memory(see col. 2, line 56).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Short et al. (US Pat. No. 6,178,529) in view of Charnock et al. (US Pat. No. 7,143,091).

As to claim 14, Short et al. disclose:

means in the medium for a version control record inclusive of each type of data structure in a shared resource (see col. 9, lines 33-35); and means in the medium for validating compatibility of a new cluster member with each data structure in said shared resource using said version control record prior to joining said cluster (see col. 5, lines 12-21).

However, Short et al. do not explicitly disclose:

a computer-readable signal-bearing medium;

Charnock et al. disclose:

a computer-readable signal-bearing medium (see col. 5, line 51);

It would have been obvious, at the time of the invention, having the teachings of Short et al. and Charnock et al. before him/her, to combine the features as disclosed by Short et al. with the features as disclosed by Charnock et al. to provide a system for the retrieval of interrelated documents (see Charnock et al., col. 1, lines 50-51).

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As to claim 15, Short et al. disclose:

wherein the medium is selected from a group consisting of: a recordable data storage medium (see col. 3, line 11),

However, Short et al. do not explicitly disclose:

a modulated carrier signal.

Charnock et al. disclose:

a modulated carrier signal (see col. 5, line 51).

It would have been obvious, at the time of the invention, having the teachings of Short et al. and Charnock et al. before him/her, to combine the features as disclosed by Short et al. with the features as disclosed by Charnock et al. to provide a system for the retrieval of interrelated documents (see Charnock et al., col. 1, lines 50-51).

As to claim 16, Short et al., as modified, additionally disclose:

further comprising means in the medium for validating compatibility of each cluster member (see col. 9, lines 15-22, 33-35 and col. 6, lines 59-62) prior to upgrading each data structure in said shared resource (see col. 5, lines 36-38 – global update).

As to claim 17, Short et al., as modified, additionally disclose:

wherein said compatibility validation means is an operating software version table within said version control record (see Short et al., col. 9, lines 33-35).

As to claim 18, Short et al., as modified, additionally disclose:



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wherein said compatibility validation means includes inactive cluster nodes (see Short et al., col. 5, lines 12-21).

As to claim 19, Short et al., as modified, additionally disclose:

means in the medium for scanning a data structure type record prior to access of said version control record(see Short et al., col. 5, lines 12-21).

As to claim 20, Short et al., as modified, additionally disclose:

wherein said shared resource is selected from a group consisting of: a storage area network, and shared memory (see Short et al., col. 2, line 56).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnese Johnson whose telephone number is 571-270-1097. The examiner can normally be reached on 4/5/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on 571-272-3978. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

01 March 2007

JJ

  
HOSAIN ALAM  
SUPERVISORY PATENT EXAMINER